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Supreme Court of the United States

April Term, 1985

HAROLD A. BEDAT, et als.

Petitioners

vs.

McLEAN TRUCKING COMPANY, et als.

Respondents

Appendix-

Ernest C. LaFollette
1432 Post Road
Fairfield, CT 06430
(203) 254-1387

Thomas K. Twist
69 Delaware Ave.
Buffalo, New York 14202
(716) 856-3670

Counsel for Petitioners

15pp

TABLE OF CONTENTS

Ruling on Motions to Dismiss
Arthur H. Latimer, Magistrate.....A-1

Acceptance and adoption of Ruling
on Motions to Dismiss
Peter C. Dorsey, USDJ.....A-11

Judgment.....A-12

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

HAROLD A. BEDAT, ET AL, Plaintiffs VS. MC LEAN TRUCKING COMPANY, ET AL, Defendants	CIVIL NO. B-80-298

RULING ON MOTIONS TO DISMISS

This is an action for equitable relief and damages under § 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185, brought by thirteen employees of McLean Trucking Company (McLean) against their employer for breach of a collective bargaining agreement, and against their unions, Locals 191 and 677 of the International Brotherhood of Teamsters, for breach of the duty of fair representation. All defendants have moved to dismiss, asserting that plaintiffs' claims are barred by the statute

of limitations. Because plaintiffs patently began this suit after the applicable six-month limitations period had run, the action is indeed untimely and defendants' motions to dismiss are granted.

Plaintiffs essentially allege in their amended complaint that: (1) they were employees of a company purchased by defendant McLean on March 1, 1979; (2) under the collective bargaining agreement then in force between McLean and the defendant unions, plaintiffs, as employees of a purchased company, had the right to "follow their jobs with dovetail seniority"; (3) the collective bargaining agreement expired on March 31, 1979, the defendants negotiated a new agreement for the next three-year period which did not contain the "dovetail seniority" provision; and (4) defendants applied the new agreement to plaintiffs retroactively, treating them as new employees with no seniority rights or

EDITOR'S NOTE

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benefits. In an earlier pleading, plaintiffs had also alleged that: (1) on August 16, 1979, the New England Joint Area Conference Committee (Committee) heard their grievances and determined that they were not entitled to "dovetail seniority" rights; (2) the Committee's decision became final and binding; and (3) the unions allegedly refused to pursue plaintiffs' claims further. This court granted a motion to dismiss addressed to that earlier complaint, because under the reasoning of United Parcel Service, Inc., v. Mitchell, 451 U.S. 56 (1981), plaintiffs' claims against McLean appeared to be barred on limitations grounds. In UPS v. Mitchell, commencement of an employee's § 301 suit against the employer was held required within the extremely short state limitations periods for actions to vacate arbitration awards, 451 U.S. at 60-62, and the instant suit was not brought until June 13, 1980, eight months after the Committee's final

decision.

Plaintiffs then amended with leave of court, cf. Foman v. Davis, 371 U.S. 178, 182 (1962), seeking to avoid the effect of Mitchell by depicting their claim differently. In the pleading now under scrutiny, plaintiffs have eliminated all references to the Committee's hearing on August 16, 1979 and allege instead that Locals 191 and 677 either failed to file plaintiffs' grievances or failed to process them through arbitration. In the new complaint, plaintiffs emphasize that their claims have never been arbitrated, and characterize the unions' refusal to arbitrate as a "continuing violation of the applicable collective bargaining agreement." Through pending motions to dismiss, defendants continue to insist that the claims in suit, however characterized, remain untimely. The Supreme Court's most recent and authoritative assessment of limitations concepts in § 301 cases, in DelCostello v.

International Brotherhood of Teamsters, --- U.S. ---, 51 U.S.L.W. 4693 (1983), has vindicated defendants' position.

In UPS v. Mitchell, supra, the question posed was the best choice among various state limitations measures, by analogy, and the Court focused on arbitration-related provisions. In DelCostello, however, the Court finally adopted a uniform, federal statute of limitations -- the generally more liberal six-month period contained in § 10(b) of the National Labor Relations Act (NLRA), 29 U.S.C. § 160(b) -- to apply both to employee actions against employers and to fair representation suits against unions. Id. at 4698. Because the court abandoned the analogy between § 301 suits and suits to vacate arbitration awards, id, at 4697, whether an employee's claims were actually arbitrated is no longer important to the decision of which limitations period should apply. See, e.g., Assad v. Mount Sinai

Hospital, No. 82-7251, slip op. at 7472 (2 Cir. Jan. 3, 1984) (Assad II); see also Assad v. Mount Sinai Hospital, 703 F.2d 36 (2 Cir. 1983) (Assad I). Not suprisingly, the DelCostello holding has been applied to cases pending at the time the decision was published. See, e.g., Cossu v. United Steelworkers of America, Civil No. H-83-714 slip op. at 2 (D. Conn. Nov. 21, 1983).

Plaintiffs do not dispute that their action, even as refashioned in the current amended complaint, should be governed by the NLRA six-month limitations period. They do argue, however, that (1) their causes of action have not yet accrued, because the union's refusal to arbitrate is a continuing wrong; and (2) the statute should be tolled during the period in which they filed and pursued charges with the National Labor Relations Board (NLRB). Neither contention is correct.

Plaintiffs' continuing violation argu-

ment will not save their claims from the limitations bar. A cause of action normally accrues, and the statute of limitations correspondingly begins to run, on the date the plaintiff could first have successfully initiated suit based on that cause of action. Santos v. District Council of New York, 619 F.2d 963, 968-69 (2 Cir. 1980). According to plaintiffs' own present complaint, the defendant unions first breached their duty of fair representation when the new collective bargaining agreement took effect in April, 1979. It was then that Locals 191 and 677 assertedly applied the new agreement retroactively and refused to process plaintiffs' grievances. Upon defendants' first refusal to represent plaintiffs, suit could have been brought. A continuing refusal to process grievances does not constitute successive new breaches, entitling plaintiffs to sue at any time. Cf. Siegel Oil v. Gulf Oil Corp. 701 F.2d 149, 153 (Temp. Emerg. Ct.

of App. 1983) (gasoline supplier's continuing refusal to supply retailer does not constitute new cause of action each month). Were it otherwise, the limitations period would never expire on an employee's fair representation suit and the purpose behind the statute of limitations would be lost. Cf. Local Lodge No. 1424, International Association of Machinists, AFL-CIO v. National Labor Relations Board, 362 U.S. 411, 424-25 (1960).

In support of the tolling argument, plaintiffs' counsel represents that charges were filed with the NLRB on October 29 and 30, 1979, with the NLRB then advising on December 13 and 17 that no complaints would issue. Counsel argues that the six-month statute should begin to run on the date the NLRB's decision not to prosecute then became final -- January 30, 1980. As at least two courts have persuasively reasoned, however, the statute of limitations for § 301 suits against employers and unions should not be

tolled during the period that NLRB charges are pending. See Nicely v. U.S. Steel Corp. 574 F. Supp. 184, 187-88 (W.D. Pa. 1983); Martin v. Adams Distribution Service, Inc., No. 83-0027-CV-W-3, 114 LRRM 3562 (W.D. Mo. September 30, 1983). A civil lawsuit under § 301 of the LMRA is wholly independent of and separate from NLRB proceedings under 29 U.S.C. § 160, may support different relief measures, and a plaintiff may of course pursue both courses simultaneously, Nicely, supra. Where two such distinct avenues for potentially quite different relief do exist, a plaintiff's pursuit of one need not and should not toll the limitations period for pursuit of the other. Cf. Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 460-66 (1975) (pursuit of Title VII claim before EEOC does not toll statute of limitations for § 1981 action). Hence, plaintiffs' initial resort to the NLRB with complaints of purported unfair labor

practices did not toll the statute of limitations for the present civil action under § 301 of the LMRA.

For the reasons set forth above, plaintiffs' claims against defendants McLean and Locals 191 and 677 are untimely, and the pending motions to dismiss are accordingly granted.

Dated at New Haven, Connecticut, this 8th day of February, 1984.

/s/ Arthur H. Latimer
ARTHUR H. LATIMER
UNITED STATES MAGISTRATE

May 22, 1984: The recommended ruling of the magistrate for the reasons set forth therein is hereby accepted and adopted over the objection of plaintiffs. SO ORDERED.

/s/ Peter C. Dorsey
Peter C. Dorsey, U.S.D.J.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

HAROLD A. BEDAT, ET AL	)	
	)	
VS.	)	CIVIL B-80-298 PCD
	)	
MC LEAN TRUCKING COMPANY, ET AL	)	

JUDGMENT

This cause came on for consideration on the defendants' motions to dismiss by the Honorable Arthur H. Latimer, United States Magistrate, and the Honorable Peter C. Dorsey, United States District Judge, and

The Court having considered the defendant's motions and all the papers submitted in connection therewith, filed its Ruling on Motions to Dismiss dismissing the complaint,

It is therefore ORDERED, ADJUDGED and DECREED that judgment be and is hereby entered for the defendants and the complaint is dismissed.

Dated at Hartford, Connecticut, this

24th day of May 1984.

SYLVESTER A. MARKOWSKI,
Clerk

BY /s/ Dennis P. Iavarone
Dennis P. Iavarone
Deputy-in-Charge